

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
Toll Free Service Access Codes ) CC Docket No. 95-155

COMMENTS OF  
QWEST COMMUNICATIONS CORPORATION

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Pursuant to the Commission's Notice of Proposed Rulemaking ("NPRM") released October 5, 1995 in the above-captioned proceeding, Qwest Communications Corporation ("Qwest"), by its attorneys, hereby submits these comments.

**INTRODUCTION**

In this proceeding, the Commission has sought comment on a range of issues pertaining to the reservation, distribution and efficient use of toll-free numbers. Because the proposals ultimately adopted in this proceeding will impact all future toll-free numbers, *i.e.*, 888, 877, 866, etc., as well as existing 800 numbers that are returned for re-use, the Commission must act decisively to ensure the fair and efficient distribution and use of these limited numbering resources in order to advance competition in the toll-free service market.

Qwest (formerly Southern Pacific Telecommunication Company) is a privately held, rapidly growing national telecommunications company offering a broad range of services, including long distance and the design, construction and maintenance of long-haul fiber optic systems. As part of its carrier business, Qwest is a provider of 800

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service — primarily to small- and medium-sized businesses — and became a Responsible Organization (“RESPORG”) in the spring of 1995.<sup>1</sup>

As the 800 number shortage became severe and depletion appeared imminent in mid-1995, the Commission adopted a rationing plan to conserve the remaining numbers until the new 888 code was ready for roll-out. Although the Commission subsequently revised its rationing plan twice to include some concept of market share growth (rather than purely static market share), the final rationing plan still significantly disadvantages the smaller, newer 800 number providers such as Qwest vis-à-vis the larger, entrenched providers. Further, the competitive harm to Qwest and other similarly situated providers continues to increase the longer this interim plan is in effect. Qwest commends the Commission’s quick action in releasing this NPRM and urges the Commission to use this proceeding to “level the playing field” with respect to the distribution of toll-free numbers as quickly as possible.

Qwest is a member of the Competitive Telecommunications Association (“CompTel”), which is filing separate comments in this proceeding on behalf of its membership. With respect to most of the issues raised by the NPRM, Qwest fully supports CompTel’s positions and will not reiterate those arguments here. Rather, Qwest will address only those few issues in which its individual circumstance requires additional comment.

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<sup>1</sup> A RESPORG is an entity authorized to manage and modify subscriber records in the SMS/800 database. A RESPORG is often, but is not necessarily, an 800 service provider.

## **ARGUMENT**

### **I. THE COMMISSION SHOULD IMPOSE AN ESCROW REQUIREMENT ON THE LARGE, ENTRENCHED TOLL-FREE SERVICE PROVIDERS**

In the NPRM, the Commission requests comment on the feasibility of requiring a payment into an escrow account for each toll-free number held in reserved status.<sup>2</sup> The Commission notes that such a requirement could limit the warehousing of numbers, and it specifically requests comment on the impact of such a requirement on small, new RESPORGs and on competition generally.<sup>3</sup>

Because the hoarding of 800 numbers (and the resulting rationing plan) has harmed Qwest's competitiveness and its ability to provide additional choice in the toll-free market, Qwest strongly supports any measure that will help to prevent such hoarding of other toll-free numbers in the future. To this end, Qwest supports the NPRM's suggestion of a one-time deposit into an escrow account for each reserved toll-free number.<sup>4</sup> To mitigate the negative impact of such a requirement on small, relatively new toll-free service providers, however, Qwest proposes that the Commission impose this requirement only upon RESPORGs that have reserved 5% or more of all toll-free

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<sup>2</sup> NPRM at ¶14.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

numbers.<sup>5</sup> A lower threshold would have a strong impact on smaller RESPORGs and thus on the competitiveness of the market and perhaps “lock in” the advantages already enjoyed by the entrenched providers.

## **II. THE COMMISSION SHOULD REQUIRE THE USE OF PIN NUMBERS ONLY FOR A LIMITED RANGE OF SERVICES**

In the NPRM, the Commission seeks comment on whether the Commission should somehow encourage—but not require—the use of personal identification number (“PIN”) technology.<sup>6</sup> The Commission notes that such a technology would allow more intensive use of toll-free numbers and thus would, by extension, reduce the speed at which toll-free numbers are exhausted.

With respect to PIN technology, Qwest has concerns about the loss of number portability that could result from this technology and therefore the continuing advantage that entrenched carriers would have with widespread use of PIN technology. On the other hand, Qwest understands that the use of such technology could be one of the best ways of ensuring that the past rapid depletion of 800 numbers not be repeated with future toll-free numbers—a result that Qwest strongly supports. Therefore, perhaps the best balance

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<sup>5</sup> Qwest actually would prefer that the threshold be set at 5% of the toll-free *market*, rather than 5% of toll-free *numbers*, because this would likely provide a more accurate measure of the dynamics of the market. Qwest recognizes, however, that such a threshold would be more difficult to calculate as an administrative matter. Nevertheless, the Commission should consider ways of implementing a market defined approach and only revert to a number defined approach if the first approach proves to be unworkable.

While providers with less than 5% of the toll-free numbers are unlikely to have the ability to hoard or warehouse numbers, perhaps one sanction for any such hoarding could be that such a carrier would become required to make escrow payments despite the fact that it falls below the threshold.

<sup>6</sup> NPRM at ¶21.

between these competing concerns is for the Commission to *require* the use of PIN technology, but only with respect to personal residential and/or personal paging services.

**III. THE COMMISSION SHOULD RETAIN THE EXISTING RESERVATION SYSTEM SO LONG AS NUMBER RESERVATION IS APPROPRIATELY LIMITED**

In the NPRM, the Commission seeks comment on the current reservation system for toll-free numbers, which operates on a first-come, first-served basis.<sup>7</sup> Qwest supports the retention of the first-come, first-served system *so long as* a carrier's "first bite" at such numbers is limited in a reasonable way. Adoption of some of the other proposals in the NPRM would place such reasonable limits on number reservation. Qwest would support, for example, a requirement that would limit the quantity of numbers that can be drawn from the database in a given time period,<sup>8</sup> a requirement that RESPORGs have an affirmative subscriber request before assigning a toll-free number to a subscriber,<sup>9</sup> and requirements that would shorten the time in which a number must be converted from reserved to working status.<sup>10</sup> Such requirements would help to ensure that the current first-come, first-served system will operate in a fair and efficient way.

**IV. THE COMMISSION SHOULD STRONGLY CONDEMN WAREHOUSING AND IMPOSE APPROPRIATE PENALTIES FOR SUCH BEHAVIOR**

Qwest strongly agrees with the Commission's tentative conclusion that the warehousing of toll-free numbers by Title II communications service providers is an

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<sup>7</sup> *Id.* at ¶23.

<sup>8</sup> *See id.* at ¶24.

<sup>9</sup> *Id.* at ¶13.

<sup>10</sup> *Id.* at ¶18.

unreasonable practice and inconsistent with the public interest.<sup>11</sup> Improper warehousing of toll-free numbers by large, entrenched providers has harmed small, competitive providers such as Qwest and has thus harmed customers who do not fully benefit from the increased competition that would occur absent such warehousing.

Regarding the Commission's proposals for the proper sanction for carriers found to be improperly warehousing numbers,<sup>12</sup> Qwest agrees with CompTel that de-certification is perhaps too harsh a sanction due, in part, to the negative impact that such an action would have on customers of the de-certified carrier. Qwest therefore agrees that appropriate fines should be imposed but urges the Commission to ensure that such fines should be sufficiently high to be meaningful and to effectively deter carriers from engaging in this practice.

**V. THE COMMISSION SHOULD LIMIT ANY AUTOMATIC RIGHT TO CORRESPONDING NEW TOLL-FREE NUMBERS SO AS NOT TO DISADVANTAGE NEWER PROVIDERS**

In the NPRM, the Commission notes that many 800 customers place a high value on their 800 numbers and therefore would like an opportunity to obtain the corresponding 888 toll-free numbers.<sup>13</sup> At the same time, however, the Commission notes that customers do not generally have a property right in their 800 numbers.<sup>14</sup> The Commission therefore seeks comment on whether current 800 customers with "vanity"

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<sup>11</sup> *Id.* at ¶32.

<sup>12</sup> *Id.* at ¶33.

<sup>13</sup> *Id.* at ¶35.

<sup>14</sup> *Id.* at ¶¶36-37.

numbers should be entitled to a right of first refusal or some other mechanism with respect to the corresponding 888 numbers.

The Commission should take strong action with respect to vanity numbers to equalize the situation for small, competitive providers that were seriously harmed by the depletion and rationing of 800 numbers. As the Commission has recognized, allowing a significant percentage of 800 number holders to obtain new corresponding toll-free numbers will perpetuate the current exhaustion problem and serve to further restrain the market share of newer market entrants.<sup>15</sup>

Qwest proposes a three-part approach to the assignment and allocation of new toll-free numbers — an approach that is not dependent on an artificial definition of what constitutes a “vanity number.” First, only customers who have trademarked their 800 numbers should be eligible to automatically receive the corresponding 888 number.<sup>16</sup> Second, to avoid problems of misdials for corresponding numbers that are merely similar or potentially confusing, current 800 customers could have the option, at their own expense, of having an interception mechanism implemented for some period of time. Such an interception mechanism could be a recording that clarifies for customers which number they are attempting to dial. Third, if these solutions are not sufficient for a particular 800 customer, it could have a very limited window of time in which it could request and receive the corresponding new toll-free number only if it is willing to pay a

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<sup>15</sup> *Id.* at ¶42.

<sup>16</sup> While the trademarking of telephone numbers is an odd notion, at least some courts have permitted the trademarking of the mnemonic itself (although not necessarily the underlying number). *See id.* at ¶39, n.84 & 85.

*significant* fee for the right to exercise this option.<sup>17</sup> If a customer is unwilling to pay this fee, the number is likely not meaningful enough to it to justify the negative competitive effects of automatic assignment of corresponding numbers.

This three-part approach will ensure that most toll-free numbers — and likely many so-called “vanity” numbers — will be available after the limited window opportunity for any carrier — including small carriers — to reserve. While this proposal perhaps imposes some hardship on some individual 800 customers, it is necessary to ensure that small, competitive toll-free service providers can continue to provide alternative services and thus benefit toll-free customers as a whole by increasing competition.

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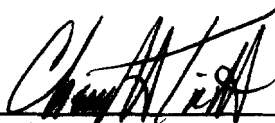
<sup>17</sup> Such a fee could be earmarked for the eventual third-party administrator of the North American Numbering Plan and could therefore be used to offset the administrative costs of this entity’s work.

The Commission’s authority to require such fees is perhaps an unsettled question. Assuming that the Commission finds that it has such authority, however, Qwest’s proposals in this regard could best ensure that small carriers have the ability to become meaningful competitors.

## **CONCLUSION**

In conclusion, these proposals are necessary to ensure the continuing availability of toll-free numbers in an efficient and fair manner that increases competition in the toll-free service market. Qwest therefore urges the Commission to implement these proposals to ensure the dynamic growth of the toll-free market and the corresponding consumer benefits that will result.

Respectfully submitted,



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